IN THE HIGH COURT OF DELHI

CM(M) No. 1441/2007

V.K.Dhingra ..... Petitioner
! through: Mr. O.P.Saxena, Advocate

VERSUS

$ Shriram Scientific & Industrial Research Foundation ..... Respondent
^ through: Mr. S.K.Jain, Advocate

RESERVED ON: 12.11.2007

% DATE OF DECISION: 12.12.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. By and under the impugned order dated 10.10.2007 petitioner's application under Section 10 read with Order 7 Rule 11 of the Code of Civil Procedure praying for rejection of the plaint has been dismissed.

2. At the hearing held on 12.11.2007, learned counsel for the petitioner stated that he presses the petition treating the application in question as under Section 10 of the Code of Civil Procedure.

3. Respondent is the plaintiff of the suit. Petitioner is the defendant. Alleging that when in service Flat No.A-2, Sri Colony, Delhi was licensed to the petitioner as a service benefit and since he has ceased to be in employment the possession was unauthorized the suit seeks to recover past damages @ Rs.12,000/- per month and future damages @ Rs.15,000/- per month.

4. It is not in dispute that pertaining to the alleged cession of service there is a dispute between the parties. Petitioner alleges that his voluntary resignation was withdrawn by him before it was accepted and therefore he continues to be an employee of the respondent. A fact which is disputed by the respondent.

5. It is also not in dispute that the respondent has sought ejectment of the petitioner by resorting to action under Section 14 (1) (i) read with Section 22 of the Delhi Rent Control Act 1958 in which it is alleged that the petitioner was a service tenant and since employer-employee relationship has snapped, petitioner is liable to be ejected from the flat.

6. The said eviction petition is a previously instituted petition. The suit has been filed subsequent thereto.

7. Contention urged by learned counsel for the petitioner was that both actions have been initiated by the

respondent. Before the rent controller, respondent is the petitioner. In the suit, respondent is the plaintiff. It is urged that the petitioner accepts being a service tenant under the respondent and that the only issue to be decided was whether petitioner continues to be a service tenant. It was urged that said dispute squarely arose for consideration before the learned Rent Controller and that before respondent could had awarded mesne profits, it had to establish that the petitioner was no longer a service tenant. Thus, counsel urged that in view of the previously instituted eviction petition, instant suit requires to be stayed.

8. Learned counsel for the respondent submitted that the landlord-tenant relationship is a fact to be decided by the Rent Controller to assume jurisdiction. The said dispute does not relate to the substantive dispute between the parties. That a decision of a Tribunal on a fact pertaining to its jurisdiction can never be treated as binding on a civil court. Thus, counsel urged that the suit filed by the respondent was maintainable.

9. Having considered the rival submissions, it would be relevant to note that the respondent is the petitioner before the Rent Controller and is the plaintiff in the civil suit. Foundation of the eviction petition as well as the suit is the assertion of the respondent that petitioner continued possession post snapping

of the employer-employee relationship is without authority of law.

10. The defence is common in both the proceedings. Petitioner denies that the employer-employee relationship has snapped.

11. Thus, it is not a case where landlord-tenant relationship is in dispute as sought to be projected by learned counsel for the respondent. I clarify, the employer-employee relationship is an admitted fact when petitioner entered into possession of the property concerned. The issue between the parties is, whether the relationship has snapped.

12. This issue squarely falls for determination in the proceedings before the learned Rent Controller.

13. The only other issue which needs to be decided is, whether the decision by the learned Rent Controller on the issue of landlord-service tenant relationship continues or not, would be binding on the civil court.

14. In view of the decision of the Supreme Court reported as (1994) 2 SCC 14 *Sulochana Amma Vs. Narayana Nair*, where explanation VIII to Section 11 of the Code of Civil Procedure was expounded, the answer has to be in the affirmative. In para 6 of the decision, the Lordships of the Supreme Court observed as under:-

“6. The words "competent to try such subsequent suit" have been interpreted that it must refer to the pecuniary jurisdiction of the earlier court to try the subsequent suit at the time when the first suit was brought. Mere competency to try the issue raised in the subsequent suit is not enough. A decree in a previous suit will not operate as res judicata, unless the judge by whom it was made, had jurisdiction to try and decide, not that particular suit, but also the subsequent suit itself in which the issue is subsequently raised. This interpretation had consistently been adopted before the introduction of Explanation VIII. So the earlier decree of the Court of a limited pecuniary jurisdiction would not operate as res judicata when the same issue is directly and substantially in issue in a later suit filed in a court of unlimited jurisdiction, vide *P.M Kavade v. A.B. Bokil*. It had, therefore become necessary to bring in the statute Explanation VIII. To cull out its scope and ambit, it must be read along with Section 11, to find the purpose it seeks to serve. The Law Commission in its report recommended to remove the anomaly and bring within its fold the conclusiveness of an issue in a former suit decided by any court, be it either of limited pecuniary jurisdiction or of special jurisdiction, like insolvency court, probate court, land acquisition court, Rent Controller, Revenue Tribunal, etc. No doubt main body of Section 11 was not amended, yet the expression "the court of limited jurisdiction" in Explanation VIII is made enough to include a court whose jurisdiction is subject to pecuniary limitation and other cognate expressions analogous thereto. Therefore, Section 11 is to be read in combination and in harmony with Explanation VIII. The result that would flow is that an order or an issue which had arisen directly and substantially between the parties or their privies an decided finally be a competent court or tribunal, though of limited or special jurisdiction, which includes pecuniary jurisdiction, will operate as res judicata in a subsequent suit or proceeding, notwithstanding the fact that such court of limited or special jurisdiction was not a competent court to try the subsequent suit. The issue must directly and substantially arise in a later suit between the

same parties or their privies. This question is no longer res integra. In *Rai Bajrang Bahadur Singh v. Rai Beni Madho Rakesh Singh and Anr.*, the facts were that under U.P. Land Revenue Act 3 of 1901, the consolidation and partition of the lands were effected and became final. Thereafter, one of the land-owners claimed title in a civil suit for a declaration that he was the superior land-holder. In view of Section 233 (K) of the Land Revenue Act, on a divergence of opinion among Oudh Chief Court and Allahabad High Court, the judicial committee held at p.214 that if a question of title affecting the partition, which might have been raised in the partition proceedings, was no raised and the partition was completed, Section 233(K) debars parties to the partition from raising the question of title subsequently in a civil court. The revenue court is a court of special jurisdiction, In *Daryao v. State of U.P.*, this Court held that the doctrine of res judicata is in the interest of public at large and a finality should be attached to the binding decision pronounced by courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. In *Gulam Abbas v. State of U.P.*, this Court held that the principle of res judicata though technical in nature, is founded on considerations of public policy. The technical aspect, for instance, pecuniary or subject-wise competence of the earlier forum to adjudicate the subject matter or to grant reliefs sought in the subsequent litigation, should be immaterial when the general doctrine of res judicata is to be invoked. Explanation VIII, inserted by the Amending Act of 1976, was intended to serve this purpose and to clarify this position. It, therefore has to be held that the decree of the District Munsif, though of limited pecuniary jurisdiction, would operate as res judicata in the subsequent suit between the same parties."

15. The petition is accordingly allowed.

16. Order dated 10.10.2007 is set aside. Treating application filed by the petitioner as under Section 10 CPC, the

same is allowed.

17. The suit filed by the respondent is stayed.

18. No costs.

December 12, 2007 PRADEEP NANDRAJOG
mm JUDGE